

NOV 30 2007

at 2 o'clock and 45 min. PM
SUE BEITIA, CLERK**United States District Court**

for the

DISTRICT OF HAWAII**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**
(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: YOSHIKI FUJIMOTO

Case Number: CR 03-00332DAE-01

Name of Sentencing Judicial Officer: The Honorable David Alan Ezra
U.S. District Judge

Date of Original Sentence: 4/5/2004

Original Offense: Bank Fraud, in violation of 18 U.S.C. § 1344, a Class B felony

Original Sentence: On 4/5/2004, the offender was sentenced to 24 months imprisonment followed by 5 years of supervised release with the following special conditions: 1) That the defendant is prohibited from possessing any illegal or dangerous weapons; 2) That the defendant is prohibited from incurring credit charges and lines of credit without the approval of the Probation Office; 3) Defendant shall pay restitution in the amount of \$97,917.70 to City Bank and \$27,985.02 to Territorial Savings and Loan immediately and any remaining balance upon release from confinement be paid during the period of supervision on an installment basis according to the collection policy of the Probation Office but at a rate of not less than 10 percent of his monthly gross income. Interest is waived; and 4) That the defendant provide the Probation Office and the Financial Litigation Unit of the U.S. Attorney's Office access to any requested financial information to include submitting to periodic debtor's examinations as directed by the Probation Office.

Revocation: On 1/10/2007, the offender's supervised release was revoked for violations which included: 1) willful nonpayment of restitution; and 2) failure to follow the Probation Officer's instructions. The offender was sentenced to 3 months imprisonment followed by 50 months supervised release with the following special conditions: 1) That the defendant shall not apply for any loan or open any line of credit or use any existing credit without prior approval of the Probation Officer; 2) That the defendant shall maintain a personal bank account separate and apart from his wife or any other family member or person; 3) That the defendant execute all financial disclosure forms, and provide the Probation Office and the Financial Litigation Unit of the U.S. Attorney's Office access to any

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(7/93)

requested financial information to include submitting to periodic debtor's examinations as directed by the Probation Office; 4) That the defendant participate in a mental health program at the discretion and direction of the Probation Office; and 5) That the defendant shall submit his person, residence, place of employment, or vehicle to a search conducted by the U.S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other resident that the premises may be subject to search pursuant to this condition. The Court also ordered that restitution of \$97,917.70 is due immediately to City Bank and \$27,985.02 to Territorial Savings and Loan immediately and any remaining balance upon release from confinement be paid during the period of supervision on an installment basis according to the collection policy of the Probation Office but at a rate of not less than 10 percent of his monthly gross income. Interest is waived while the defendant is serving his term of imprisonment and shall commence to accrue on any remaining balance upon his release on supervision.

Type of Supervision: Supervised Release Date Supervision Commenced: 4/9/2007

PETITIONING THE COURT

- [✓] To modify Special Condition No. 5 to include search of the offender's computer as follows:

Special Condition No. 5: The defendant shall submit his person, residence, place of employment, or vehicle to a search conducted by the U.S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. The defendant shall also submit to periodic unannounced examinations of his computer and computer accessories as well as provide access to his internet service provider account records, as directed by the Probation Office. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other resident that the premises may be subject to search pursuant to this condition.

CAUSE

On 4/9/2007, the offender's 50-month term of supervision commenced. On 6/3/2007, the offender commenced employment as a shuttle driver for Ilima Tours in Honolulu.

On 10/30/2007, this officer received a telephone call from one of the offender's adult sons requesting a meeting at the Probation Office. Subsequently that same date, the offender's sons, Kevin and Scott Fujimoto, reported to the Probation Office and reported that the offender was attempting to reinvolve himself in "Nigerian schemes." In particular, the Fujimotos indicated that they had copies of correspondence between the offender and someone in a foreign country in which the offender would be attempting to send money and/or open a bank account to receive money which would be shared. Later that afternoon, this officer received copies of some of the correspondence which the Fujimotos related were printed from the offender's computer.

On 10/31/2007, the Probation Office executed a search of the offender's vehicle, bedroom, and the common areas of the Fujimoto residence pursuant to the offender's search condition and permission from Kevin Fujimoto. During the search, a number of documents, including financial documents, were recovered which suggest the offender is in direct violation of his supervision. These violations include: 1) unauthorized use of existing credit (credit card) without prior approval of the Probation Officer; 2) opening a line of credit (loan) without prior approval of the Probation Officer; and 3) failure to report bank account(s). Additionally, the offender was briefly interviewed at the residence and admitted to at least three different "projects" in which he was attempting to receive a share of money in the form of checks and/or deposits from various foreign nationals. The offender further reported that all correspondence regarding the "projects" was contained within his computer. The offender's computer was also recovered, but not searched at that time.

Subsequently, this officer advised the offender that the Court would be notified of his violations and that he would be required to return to Court. This officer further advised the offender that this officer would request the Court to modify his supervision conditions to allow a search of the contents of the computer. The search of the computer will be conducted by certified computer forensic examiners from the Federal Bureau of Investigation.

On 11/20/2007, the offender agreed to execute a Waiver of Hearing to Modify Conditions of Supervised Release (Probation Form 49). The offender agrees to modify Special Condition No. 5 (Search Condition) to include the search of his "computer and computer accessories as well as provide access to his internet service provider accounts." The offender further agrees to include the proposed modification without a hearing and without assistance of counsel.

Please be advised the offender is entitled to a hearing and to counsel before these new conditions are imposed. Attached is the signed Waiver of Hearing to Modify Conditions of Supervised Release indicating that the offender has waived these rights. His attorney, Harlan Kimura, and Assistant U.S. Attorney Lawrence L. Tong have been notified by this officer of this request, and both expressed no objection to the modification.

Please also be advised that a Request for Course of Action (Probation Form 12C) is pending and will be submitted upon completion of a thorough review of the contents of the computer and the documents seized on 10/31/2007.

Respectfully submitted by,



DEREK M. KIM
Senior U.S. Probation Officer

Approved by:

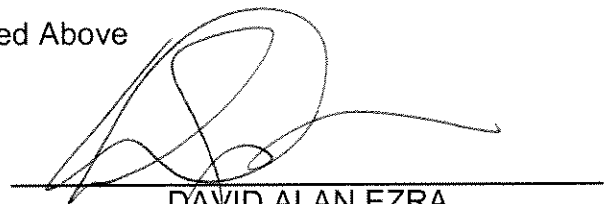


GENE DeMELLO, JR.
Supervising U.S. Probation Officer

Date: 11/28/2007

THE COURT ORDERS:

- ☒ The Modification of Conditions as Noted Above
☐ Other



DAVID ALAN EZRA
U.S. District Judge
NOV 30 2007

Date

PROB 49
(5/96)**United States District Court****District of Hawaii****Waiver of Hearing to Modify Conditions
of Probation/Supervised Release and/or Extend Term of Supervision**

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

☒ To modify Special Condition No. 5 to include search of the offender's computer as follows:

Special Condition No. 5: The defendant shall submit his person, residence, place of employment, or vehicle to a search conducted by the U.S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. The defendant shall also submit to periodic unannounced examinations of his computer and computer accessories as well as provide access to his internet service provider account records, as directed by the Probation Office. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other resident that the premises may be subject to search pursuant to this condition.

Witness:

Robin A. AcMello for:
DEREK M. KIM
Senior U.S. Probation Officer

Signed:

Y. Fujimoto
YOSHIKI FUJIMOTO
Supervised Releasee

11/20/07
Date